

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MUFFIN ANDERSON,

11 Plaintiffs,

12 v.

13 JPMORGAN CHASE & CO., *et al.*,

14 Defendants.
15

Case No. C18-73 RSM

ORDER GRANTING DEFENDANT
CHASE'S MOTION TO DISMISS

16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendant JPMorgan Chase Bank, N.A.
18 ("Chase")'s Motion to Dismiss. Dkt. #19. Plaintiff Muffin Anderson opposes this Motion.
19 Dkt. #21. For the reasons stated below, the Court GRANTS Defendant's Motion and dismisses
20 all claims against Chase.
21

22 **II. BACKGROUND¹**

23 **A. Factual Background**

24 Plaintiff Anderson received a loan and mortgage on the property at 3503 S. Hudson
25 Street, Seattle, from Chase in February of 2007. Dkt. #17 ¶¶ 10–11. On April 22, 2013, Ms.
26

27 ¹ The following background facts are taken from Plaintiff's Amended Complaint (Dkt. #17), and accepted as true
28 for purposes of ruling on this Rule 12(b)(6) Motion to Dismiss. The Court has also considered the documents
attached to Chase's Motion, which are explicitly referenced in the Amended Complaint. *See Knievel v. ESPN*, 393
F.3d 1068, 1076 (9th Cir. 2005). These background facts focus on Defendant Chase, as only the claims brought
against Chase are at issue.

1 Anderson received a letter from Chase stating that she was approved for a trial-loan
2 modification plan, provided that she made three trial payments for June, July, and August 2013.
3 *Id.* at ¶¶ 12–13. On May 15, 2013, Chase informed Anderson it was transferring loan servicing
4 to Select Portfolio Servicing, Inc. (“Select Portfolio”) and said to make payments and inquiries
5 to it. *Id.* ¶ 15. However, On May 30, 2013, Ms. Anderson received a second letter from Chase
6 stating that the June payment was due, which created confusion about where Ms. Anderson was
7 to send payments. *Id.* at 16. Ms. Anderson made the first three trial payments to Chase, *id.* at ¶
8 14, and subsequent payments to Select Portfolio, *id.* at ¶ 17.

10 On January 31, 2014, Select Portfolio informed Anderson she was eligible for a trial
11 modification plan and she returned an agreement for it. *Id.* ¶ 18. On May 22, 2014, Select
12 Portfolio informed Anderson that she was not approved for the loan modification and that it
13 was not honoring the trial modification that was put in place by Chase in 2013. *Id.* ¶ 19.

15 From 2013 to the present date, Ms. Anderson continuously contacted Select Portfolio
16 and Chase to try to resolve the issues with her mortgage loan. *Id.* at ¶ 20. In the meantime, she
17 has continued to send in the modified loan payments each month. Plaintiff made her monthly
18 payment for several years without incident. *Id.*

20 On December 15, 2016, Select Portfolio sent Ms. Anderson a letter, informing her that
21 it was returning her mortgage payment and that she owed \$51,966.91 to halt foreclosure action
22 on her home. *Id.* at ¶ 21. On January 26, 2017, Ms. Anderson received a fax from Chase,
23 allegedly informing her that it was attempting to collect a debt on her loan. *Id.* at ¶ 23; *see* Dkt.
24 #19 at 60 (January 26, 2017, Fax).

26 On June 2, 2017, Ms. Anderson receive a letter from Quality Loan Servicing, Inc. with
27 a Notice of Trustee’s Sale set for September 29, 2017. *Id.* at ¶ 26.
28

1 Ms. Anderson filed this action in King County Superior Court on December 28, 2017.
2 Dkt. #1-1. Chase removed to this Court on January 18, 2018. Dkt. #1. Ms. Anderson filed an
3 Amended Complaint on March 12, 2018. Dkt. #17. Ms. Anderson's claims against Defendant
4 Chase are brought under: RCW 19.86 Washington's Consumer Protection Act ("CPA"), RCW
5 19.146 Mortgage Broker Practice Act, RCW 61.24 Deeds of Trust Act ("DTA"), breach of
6 contract, breach of the covenant of good faith and fair dealing, and fraud. *Id.* Chase now
7 moves to dismiss these claims. Dkt. #19.

9 III. DISCUSSION

10 A. Legal Standard

11 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
12 true, and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
13 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
14 However, the court is not required to accept as true a "legal conclusion couched as a factual
15 allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
16 550 U.S. 544, 555 (2007)). The complaint "must contain sufficient factual matter, accepted as
17 true, to state a claim to relief that is plausible on its face." *Id.* at 678. This requirement is met
18 when the plaintiff "pleads factual content that allows the court to draw the reasonable inference
19 that the defendant is liable for the misconduct alleged." *Id.* The complaint need not include
20 detailed allegations, but it must have "more than labels and conclusions, and a formulaic
21 recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Absent
22 facial plausibility, Plaintiff's claims must be dismissed. *Id.* at 570.

26 //

27 //

1 **B. Defendant’s Motion**

2 As an initial matter, Chase argues that the Amended Complaint as a whole is
3 “conclusory and devoid of any facts about what Chase did wrong,” and violates Rule 8 pleading
4 standards by failing to distinguish between Defendants. Dkt. #19 at 11. The Court agrees that
5 the Amended Complaint is at times conclusory and conflates the actions of Defendants.
6

7 **1. Mortgage Broker Practices Act Claim**

8 Chase then argues that Ms. Anderson’s Mortgage Broker Practices Act Claim fails
9 because that Act expressly exempts FDIC-regulated banks like Chase. *Id.* at 1 –12 (citing RCW
10 19.146.020). Ms. Anderson appears to agree and does not contest dismissal of this claim. Dkt.
11 #20 at 4.
12

13 **2. Statute of Limitations**

14 Chase argues that the remainder of Ms. Anderson’s claims are time-barred, mainly
15 because Chase’s involvement in this loan ended in 2013. The CPA has a four-year limitations
16 period, RCW 19.86.120, and the remainder of the claims, with the exception of the breach of
17 contract claim, have three-year limitations periods. The statute of limitations for an action upon
18 a contract in writing, or for express or implied liability arising out of a written agreement, is six
19 years pursuant to RCW 4.16.040.
20

21 In Response, Ms. Anderson argues that she did not have a cause of action until she
22 received Defendant Select Portfolio’s December 15, 2016, letter mentioning foreclosure. Dkt.
23 #21 at 4. As far as her claims against Chase, however, she cites to alleged deceptions that
24 occurred in Chase’s 2013 communications with Ms. Anderson. *See id.* at 5–6. At one point,
25 Ms. Anderson contends that Select Portfolio was acting as an agent for Chase. *See id.* at 13.
26
27
28

1 On Reply, Chase argues that its alleged violations of the above statutes are not related to
2 Select Portfolio's 2016 declaration of default and foreclosure and that Ms. Anderson "offers no
3 compelling authority to support her theory that her claim against Chase accrued in 2016 due to
4 Select Portfolio's actions." Dkt. #22 at 8. Chase argues it is not vicariously liable for Select
5 Portfolio. *Id.* (citing *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 165 (1990); *Stephens*
6 *v. Omni Ins. Co.*, 138 Wn. App. 151, 183 (2007), *aff'd sub nom. Panag v. Farmers Ins. Co. of*
7 *Wash.*, 166 Wn.2d 27 (2009). Chase contends it had no interest in the Deed of Trust after
8 January 2013. *Id.* (citing Dkt. #19 at 47 (Assignment of Deed of Trust)). Because Ms.
9 Anderson argues that her claims would accrue when Chase failed to provide a modification or
10 when Chase reneged on its alleged promise when it transferred servicing on June 1, 2013, Chase
11 argues the statutes of limitation on these claims have expired. *Id.* at 8–9.

14 The Court agrees with Chase. The pleadings inarguably point to Chase's involvement
15 ending when it transferred servicing. Chase never promised not to transfer servicing of her
16 loan. Ms. Anderson's causes of action improperly conflate the actions of Defendants, so that
17 Chase is accused of Select Portfolio's actions. The pleadings do not plausibly claim that Chase
18 is vicariously liable for Select Portfolio. Given all of the above, the claims brought under the
19 CPA, DTA, and fraud are properly dismissed as untimely.

21 **3. Other Bases for Dismissal of Claims**

22 Chase presents other bases for dismissing Ms. Anderson's claims.

24 Chase argues that Ms. Anderson's DTA claim fails because, *inter alia*, no foreclosure
25 sale has occurred. Dkt. #19 at 18 (citing *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d
26 412, 429 (2014) ("[T]here is no actionable, independent cause of action for monetary damages
27 under the DTA based on DTA violations absent a completed foreclosure sale"). Chase also
28

1 points out that it is the wrong Defendant for this claim, because Chase is not the entity that
2 would foreclose on this property. *Id.* at 18–19.

3 Chase argues that the breach of contract claim fails because, *inter alia*, the document she
4 points to as a contract to give her a loan modification, Chase’s April 22, 2013, letter, Dkt. #19 at
5 67, “does not establish a concrete promise to offer her a loan modification, and she does not
6 allege she satisfied the conditions precedent.” Dkt. #19 at 19. This may well be true. At first
7 the letter appears to make an offer of a loan modification contingent solely on Ms. Anderson
8 making trial payments, but goes on to state “[y]ou will be required to execute a permanent
9 mortgage modification agreement that we will send you before your modification becomes
10 effective. Until then, your existing loan and loan requirements remain in effect and
11 unchanged...” *Id.* at 67. Ms. Anderson does not plead that she signed that subsequent
12 agreement with Chase. In any event, the pleading for this claim states only that “Defendants
13 induced plaintiff to remain with Chase as a customer with the written promise of a loan
14 modification and then breached the agreement by instituting foreclosure proceedings as
15 described above.” Dkt. #17 at ¶ 52. The Court finds that this pleading fails the *Twombly/Iqbal*
16 standard by conflating the actions of Defendants and generally lacking sufficient detail.
17 Therefore this claim is properly dismissed.
18

19 Chase argues that Ms. Anderson’s covenant of good faith and fair dealing claim fails
20 because it does not point to a specific contract term that Chase breached. *Id.* at 20–21 (citing
21 *Gossen v. JPMorgan Chase Bank*, 819 F. Supp. 2d 1162, 1170-71 (W.D. Wash. 2011)). The
22 Court agrees. Ms. Anderson pleads only “[t]he Acts as described above [referring to the entire
23 preceding pleading] were committed in bad faith and for the purpose of inducing plaintiff to
24 change her position. Said conduct was unlawful, unfair and fraudulent.” Dkt. #17 at ¶ 55.
25
26
27
28

1 Finally, Chase argues that the fraud claim must also be dismissed because Ms. Anderson
2 does not plead with specificity or identify an actionable misrepresentation, and because she
3 brings the claim more than three years after Chase left this loan. *Id.* at 22–23. The Court agrees
4 on all counts.

5 C. Leave to Amend

6
7 Where a complaint is dismissed for failure to state a claim, “leave to amend should be
8 granted unless the court determines that the allegation of other facts consistent with the
9 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-*
10 *Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Ms. Anderson states in her Response
11 that she requests leave to amend her Complaint, but does not offer any further argument to
12 support that request. The Court notes that Ms. Anderson has had multiple opportunities to plead
13 her case and has failed to state her claims against Chase with specificity and separately from her
14 claims against the other Defendants. The Court further finds that Ms. Anderson cannot allege
15 different facts, consistent with the challenged pleading, which could survive dismissal and that
16 therefore dismissal with prejudice is warranted.
17
18

19 IV. CONCLUSION

20 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
21 and the remainder of the record, the Court hereby finds and ORDERS that Defendant Chase’s
22 Motion to Dismiss (Dkt. #19) is GRANTED. Plaintiff’s claims against Chase are DISMISSED
23 with prejudice.
24

25 //

26 //

27 //
28

1 DATED this 26th day of July 2018.

2
3 

4 RICARDO S. MARTINEZ
5 CHIEF UNITED STATES DISTRICT JUDGE
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28